

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 04-12479 MEL

**FALKEN INDUSTRIES, LTD. and
ROY JANIS,**

Plaintiffs,

v.

**CHRISTIAN JOHANSEN and
PATRICK SAUTIN,**

Defendants.

**DEFENDANTS' MOTION TO DISMISS
OR, IN THE ALTERNATIVE,
MOTION TO STAY AND TO COMPEL ARBITRATION**

Defendants Patrick Sautin and Christian Johansen ("Defendants"), by their undersigned counsel, respectfully move the Court, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure for an order dismissing Plaintiffs' claims against Defendants for lack of personal jurisdiction. Defendants also move the Court for an order dismissing Plaintiffs' case pursuant to the doctrine of forum non conveniens. In the alternative, Defendants respectfully move the Court, pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, et seq., for an order staying Plaintiffs' action and compelling the parties to arbitrate because the parties agreed to arbitrate some of the claims in Plaintiffs' Complaint.

Plaintiffs have not and cannot establish that either Sautin or Johansen had sufficient contacts with the Commonwealth of Massachusetts to allow this Court to exercise jurisdiction over them. In addition, exercising personal jurisdiction over Sautin and Johansen would violate Due Process. Moreover, Massachusetts is an inconvenient forum for this litigation. Finally, the

parties agreed to arbitrate at least some of the claims as alleged in the Complaint. The Court should stay this action and compel the parties to arbitrate.

Detailed reasons in support of this Motion are set forth in the Memorandum in Support and Declarations of Patrick Sautin and Christian Johansen which are submitted herewith and incorporated herein by reference.

REQUEST FOR ORAL ARGUMENT

Defendants Patrick Sautin and Christian Johansen, believing that oral argument may assist the Court and wishing to be heard through their counsel, respectfully request oral argument on this Motion pursuant to Local Rule 7.1(d).

WHEREFORE, Defendants Patrick Sautin and Christian Johansen respectfully requests the Court to enter an Order:

- (1) granting their motion to dismiss for lack of personal jurisdiction; or, in the alternative,
- (2) granting their motion to dismiss on forum non conveniens grounds; or, in the alternative,
- (3) granting their motion to stay this action and compelling the parties to arbitrate; and
- (4) assessing all costs of suit against Plaintiffs Falken Industries, Ltd. and Roy Janis; and
- (5) granting Defendants such other relief to which they may be entitled.

Dated: December 1, 2004

Respectfully submitted,
DEFENDANTS CHRISTIAN JOHANSEN
AND PATRICK SAUTIN

By their attorneys,

/s/ Kurt B. Fliegauf

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the following counsel of record on this the 1st day of December, 2004, via U.S. Mail, postage pre-paid:

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